

STATE OF MICHIGAN  
COURT OF APPEALS

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STEVEN A. GRANITZ,

Plaintiff/Counter-Defendant-  
Appellee,

v

DEANNA L. GRANITZ,

Defendant/Counter-Plaintiff-  
Appellant.

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UNPUBLISHED  
November 1, 2007

No. 272535  
Oakland Circuit Court  
LC No. 2005-714418-DM

Before: Kelly, P.J., and Meter and Gleicher, JJ.

KELLY, P.J. (concurring in part and dissenting in part.)

I concur in the majority's conclusion that the trial court did not abuse its discretion by entering the judgment of divorce, but respectfully dissent from the conclusion that the trial court clearly erred in assessing sanctions against defendant.

This Court reviews a trial court's decision on whether to award attorney fees under MCR 2.114 for clear error. *McDonald v Election Comm*, 255 Mich App 674, 697; 662 NW2d 804 (2003). "A decision is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made." *In re Costs and Attorney Fees*, 250 Mich App 89, 94; 645 NW2d 697 (2002).

Here, defendant's entire focus in the trial court was to have the mediated settlement agreement set aside before any judgment was entered. The day after mediation, she terminated her relationship with her attorney and obtained new counsel. Successor counsel immediately notified plaintiff's counsel that he did not consider that matter settled, he would be pursuing a previously scheduled show cause motion, and he would be moving to adjourn the trial date.<sup>1</sup> At the next scheduled appearance before the trial court, defendant did not appear and her counsel argued that the settlement should be set aside because it was obtained while defendant was under extreme duress. He further charged that defendant's prior counsel had not only neglected the case entirely but that her actions had allowed defendant to become impoverished. The trial court

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<sup>1</sup> The date scheduled for trial was six days after mediation.

repeatedly informed defendant to bring those issues before the court in the “proper way” and that “[i]f there are other issues, those are to be raised after the judgment is entered.” Despite these repeated instructions, defendant failed to do so.<sup>2</sup> Instead, defendant continually attempted to bring post-judgment issues before the trial court before the judgment was actually entered. Defendant further failed to follow MCR 2.602 when objecting to plaintiff’s proposed judgment. The trial court, citing MCR 2.114, assessed sanctions in the amount of \$1,500.

On this record, I do not believe the trial court erred in assessing sanctions. All of defendant’s efforts were undertaken to avoid the consequences of the settlement reached at mediation, to prevent the entry of a judgment and to unnecessarily continue the divorce proceedings. I believe the trial court properly determined that the pleadings were filed to cause unnecessary delay in entering a final judgment. The fact that the trial court properly exercised control of the proceedings and prevented this tactic from being successful does not change the *purpose* of the pleadings themselves or defendant’s intent in filing them. There was no clear error and I would affirm on this issue.

/s/ Kirsten Frank Kelly

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<sup>2</sup> Moreover, defendant’s failure to follow the instructions of the trial court and to pursue these issues in accord with the court rules, leaves this Court unable to review these claims.